

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 4:19-CR-00367 ERW
)
JOHN RALLO,)
)
Defendant.)

**UNITED STATES' RESPONSE TO DEFENDANT'S FIRST AMENDED MOTION FOR
COMPASSIONATE RELEASE UNDER 18 U.S.C. § 3582(c)(1)(A)(i)**

The United States of America, through Assistant United States Attorney Hal Goldsmith, opposes Defendant's First Amended Motion for Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A)(i). (Doc. # 77). Defendant fails to identify any "extraordinary and compelling reasons" that qualify for a reduced sentence under the statute, much less satisfy the separate requirement of showing that he is no longer a danger to community. Further, the mandatory sentencing factors in 18 U.S.C. § 3553(a) cut against Defendant's early release. Thus, Defendant's motion should be denied.

1. The United States fully incorporates and adopts its previously filed Response to Defendant's Motion for Compassionate Release (doc. 74) as if fully restated herein.
2. Defendant asserted that he submitted an initial request for early release to the Warden, USP Marion, on May 21, 2020, prior to his actual surrender to that facility. (Doc. # 73, page 2). Defendant now asserts that he filed a second request to the Warden, USP Marion, on July 7, 2020, again requesting early release (Doc. # 77, paragraph 2). Defendant states that the Warden has not ruled on either of his requests.

3. Defendant now advises this Court that on August 2, 2020 he tested positive for the COVID-19 virus, and “was seriously ill for several days and continues to experience symptoms primarily related with breathing difficulty.” (Doc. # 77, paragraph 6).

4. However, a review of the defendant’s medical records suggests otherwise. Defendant was initially medically cleared and released to the general population at USP Marion Camp on July 15, 2020, after the required quarantine period following his June 22, 2020 surrender to that facility. After discovering camp inmates who tested positive for COVID-19, mass testing of all inmates was performed. A rapid test for defendant on July 21, 2020 was negative. A rapid test for defendant on August 2, 2020 was positive and he was placed in isolation status, per CDC guidelines.

5. At the time of his positive test, on August 2, 2020, defendant revealed no COVID-19 symptoms, and claimed “that he has not had a new onset cough, new onset shortness of breath, stuffy or runny nose, chills, repeated shaking with chills, muscle or body aches, sore throat, new onset loss of taste or smell, new onset abdominal pain.” Defendant reported no pain, had normal vital signs, was “alert and oriented, lung sounds clear bilaterally, adequate respiratory effort.”

6. On August 6, 2020, defendant reported, “[N]o complaints. Reports he is feeling fine. Denies taking any fever reducing medication in the past 24 hours.” Defendant had an “Essentially normal exam. Nothing to report. Denies a new onset cough, new onset shortness of breath, stuffy or runny nose, chills, repeated shaking with chills, muscle or body aches, sore throat, new onset loss of taste or smell, new onset abdominal pain.” Defendant reported no pain.

7. On August 7, 2020, defendant reported, [N]o complaints. Reports he is feeling fine. Denies taking any fever reducing medication in the past 24 hours.” Defendant reported no pain.

Defendant's exam and vital signs were normal. Defendant denied "a new onset cough, new onset shortness of breath, stuffy or runny nose, chills, repeated shaking with chills, muscle or body aches, sore throat, new onset loss of taste or smell, new onset abdominal pain."

8. On August 8, 2020, defendant reported, [N]o complaints or symptoms at this time. Reports he is feeling fine. Denies taking any fever reducing medication in the past 24 hours." Defendant advised the medical staff, "I feel pretty good today." Defendant reported no pain. Defendant had a normal examination, and had no respiratory distress. Defendant's condition was determined to be stable, and denied "a new onset cough, new onset shortness of breath, stuffy or runny nose, chills, repeated shaking with chills, muscle or body aches, sore throat, new onset loss of taste or smell, new onset of abdominal pain. No shortness of breath. Lungs clear on auscultation." Defendant denied any symptoms.

9. On August 9, 2020, defendant reported "he feels well." Defendant claimed "he does not have a cough, shortness of breath, stuffy or runny nose, chills, repeated shaking with chills, muscle or body aches, sore throat, loss of taste or smell, or abdominal pain." Defendant had taken "no fever reducing agents in past 72 hours," and had no pain. Defendant had normal vital signs upon examination, and "appears well and with no distress."

10. On August 10, 2020, defendant reported "no complaints." Defendant reported "he is feeling fine. Denies taking any fever reducing medication in the past 24 hours." Defendant had no pain. Upon examination, defendant's vital signs were normal, and he had "no cough or shortness of breath, nasal congestion, runny nose, sore throat, fatigue, aches and pains, headache, persistent pain in chest, loss of taste and/or sense of smell, diarrhea, vomiting, or self-treatment." Defendant "appears well, voices no complaints."

11. On August 11, 2020, defendant's 10th day in medically ordered isolation, defendant reported “[N]o complaints. Reports he is feeling fine. Denies taking any fever reducing medications in the past 24 hours.” Defendant had no pain. Defendant's vital signs were normal, and he had “no cough or shortness of breath, nasal congestion, runny nose, sore throat, fatigue, aches and pains, headache, persistent pain in chest, loss of taste and/or sense of smell, diarrhea, vomiting, or self-treatment.” The medical staff determined that defendant's COVID-19 virus was resolved and, per CDC guidelines, defendant was released from isolation back to his normal housing.

12. As of August 25, 2020, the Bureau of Prisons advises there was 1 inmate at USP Marion who remained positive for the COVID-19 virus. 106 camp inmates, including defendant, had fully recovered.¹

13. Defendant continues to receive all appropriate medical care, and his required medications were refilled on August 18, 2020, having “no recent medical issues that would prevent a medication refill.” Filed under seal, as an exhibit to this Response, are defendant's pertinent medical records from USP Marion Camp. The Bureau of Prisons will continue to insure defendant receives all necessary medical care, including all medications, screenings, testing, and medical scans.

¹ On August 5, 2020, after being hospitalized, one inmate passed away from complications related to COVID-19. He was a 39-year-old male with pre-existing medical conditions, serving an 84 month sentence for Distribution of a Controlled Substance.

WHEREFORE, for all of the reasons previously submitted to this Court in the United States' original Response to Defendant's Motion for Compassionate Release (Doc. # 74), the United States respectfully requests that this Court deny Defendant's motion, and for such other relief this Court deems just and proper under the circumstances.

Respectfully submitted,

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/s/ Hal Goldsmith
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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2020, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Hal Goldsmith
Hal Goldsmith MO 32984
Assistant United States Attorney